DOCUMENT RESUME

ED 321 105 CE 055 275

TITLE Child Labor Law and School Work. A Guide.
INSTITUTION Maine State Dept. of Educational and Cultural Services, Augusta.
PUB DATE 88
NOTE 48p.
PUB TYPE Guides - Non-Classroom Use (055)

EDRS PRICE MF01/PC02 Plus Postage.
DESCRIPTORS *Access to Education; Adolescents; Apprenticeships; *Child Labor; Civil Rights; Cooperative Education; *Education Work Relationship; *Employer Employee Relationship; Experiential Learning; Federal Legislation; Minimum Wage Legislation; On the Job Training; Secondary Education; Special Needs Students; State Legislation; Unemployment Insurance; Vocational Education; Workers Compensation; *Work Experience Programs; Work Study Programs
IDENTIFIERS *Maine

ABSTRACT

This guide to Maine and United States child labor laws and their relevance to school work experiences for youths aged 14 to 18 is intended to provide teachers, guidance counselors, job developers, and job coordinators with basic information on the standards and major provisions of the laws. Chapter 1 tells why the guide was developed; recommends 11 resources; gives an overview of applicable laws, including those regarding child labor, hazardous occupations, minimum wages, worker's compensation, unemployment insurance, civil rights, accessibility standards, section 504 of the Rehabilitation Act, and miscellaneous rules and regulations; and discusses educators' roles and responsibilities. Chapter 2 addresses the relationship of jurisdiction and school-to-work programs, including the employment relationship, which is the key to determining whether programs come under federal or state jurisdiction; school-to-work programs that do not involve the employer-employee relationship, such as those in which students are trainees or volunteers or shadow a person at work; and programs in which there is an employee-employer relationship, such as alternative education, apprenticeship, internship, on-the-job training, vocational cooperative education, work experience, work release, and work-study programs. Chapter 3 covers the laws' requirements regarding age, occupations, hours, and wages for 14- and 15-year-olds. Chapter 4 does the same for 16- and 17-year-olds. Chapter 5 covers the laws' relationship to 18-year-olds. The document concludes with the addresses and phone numbers for relevant Maine and federal offices. (CML)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

2463

ED321105

A Guide to

Child Labor Law and School Work

U.S. DEPARTMENT OF EDUCATION
Office of Educational Research and Improvement
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

☑ This document has been reproduced as received from the person or organization originating it.

☐ Minor changes have been made to improve reproduction quality.

• Points of view or opinions stated in this document do not necessarily represent official OERI position or policy.

"PERMISSION TO REPRODUCE THIS MATERIAL HAS BEEN GRANTED BY

Dr. Gray-Hayes

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)."

Maine Department of
Educational & Cultural Services

1988

CE055275

2

BEST COPY AVAILABLE

A Guide to Child Labor Law and School Work

Maine Department of Educational
& Cultural Services

1988

Printed under Approp. 3230-4133

STATE OF MAINE
Department of
Educational and Cultural Services
STATE HOUSE STATION 23
AUGUSTA, MAINE 04333

The development of this handbook has been made possible through the input and consultation of many individuals. The Department of Educational and Cultural Services values this input and wishes to acknowledge the following contributors.

- Carolyn Chaplin, Director
  Lake Region Vocational Center
  Bridgton, Maine
- Anne Hamel, Supervisor
  Employment Standards
  Maine Bureau of Labor Standards
  Augusta, Maine
- Margaret MacDonald
  Federal Department of Labor
  Boston, Massachusetts
- Al Butler, Director
  Federal Department of Labor
  Portland, Maine
- Brian Trask, Coordinator
  Office of State Handicapped Accessibility
  Bureau of Rehabilitation
  Augusta, Maine
- Gary Plossay, Project Director
  Project L.I.V.E. MSAD #11
  Gardiner, Maine
- Gunnel White
  Portland Regional Vocational
  Technical Center
- Mary Frances Wallman
  Waterville Vocational Center
- Dale Huntress
  Co-op Coordinator
  Scarborough High School

We also wish to acknowledge Marilyn Russell, Human Services Development Institute, University of Southern Maine, and Maurice Parent, Bureau of Adult and Secondary Vocational Education, Maine Department of Educational and Cultural Services for their efforts in preparing this publication.

William Cassidy
Associate Commissioner
Bureau of Adult and Secondary Vocational Education

David Noble Stockford
Director
Division of Special Education
Bureau of Instruction

Table of Contents

Chapter I
Introduction to Child Labor Law **Page**

A. Overview of the Guide 1

B. Overview of Laws Applicable to the Employment of Youth 3

1. Child Labor Law
2. Minimum Wage Act
3. Hazardous Occupations Orders
4. Workers Compensation Act
5. Unemployment Insurance
6. Civil Rights Act
7. Accessibility Standards
8. Section 504 of the Rehabilitation Act
9. Miscellaneous
   - 9.1. Fringe Benefits
   - 9.2. Taxes
   - 9.3. Uniforms and Safety Equipment
   - 9.4. Rules of Business Facility
   - 9.5. Financial Benefits

C. Educator's Role and Responsibility 9

Chapter II
Employment Relationship and School-Work Programs

A. Employment Relationship 11

B. School-Work Programs Not Involving the Employer-Employee Relationship 11

1. Trainee
   a. Community Based Learning
   b. Field Based Learning/Clinical Experience
   c. Job Sampling
2. Volunteer
3. Job Shadow

C. School-Work Programs Involving an Employer-Employee Relationship 16

1. Alternative Education
2. Apprenticeship
3. Internship
4. On-the-job Training
5. Vocational Cooperative Education
6. Work Experience Programs
7. Work Release
8. Work Study

Chapter III
Child Labor Provisions for 14 - 15-Year-Olds

A. Age 19

A.1. Is the Student younger than 16?

B. Occupation` 20

B.1. What are the types of work which can be performed by 14 - 15-year- olds?

B.2. Are there restrictions on the type of work performed by 14 -15-year-olds?

B.3. What are hazardous occupations?

B.4. Are agricultural hazardous occupations prohibited to 14 -15-year-olds?

B.5. Are there any exemptions to the agricultural hazardous occupations?

C. Hours 27

C.1. Are the number of hours and times of day limited?

D. Wages 28

D.1. Are 14 -15-year-olds paid minimum wage?

D.2. What are the exceptions to the minimum wage rate?

D.3. What are the sub-minimum wage rates for students in certain jobs?

D.4. What are the sub-minimum wages for handicapped workers in competitive or sheltered employment?

D.5. Are there any reporting or recordkeeping requirements for schools?

D.6. Can the school apply for the certificate for sub-minimum wages for handicapped student workers and student learners?

D.7. How long does the certificate last?

Chapter IV
Child Labor Provisions for 16 - 17-Year-Olds

A. Age 31

A.1. Is the student 16 or 17?

B. Occupation 32

B.1. Are there any restrictions on the type of work performed by 16 -17-year-olds?

B.2. Are there exceptions to the hazardous occupation restrictions?

B.3. Does the hazardous occupations exemption apply to summer job placements if the job developer or coop coordinator continues to monitor the placement?

B.4. Are there hazardous occupations prohibited to 16 - 17-year-olds employed in agriculture?

C. Hours 33

C.1. Are the number of hours and times of day limited?

D. Wages 34

D.1. Are 16 - 17-year-olds paid minimum wage?

D.2. What are the sub-minimum wage rates for students?

D.3. What are the sub-minimum wages for handicapped workers in competitive or sheltered employment?

D.4. Are there any reporting or recordkeeping requirements for schools?

D.5. Can the school apply for the certificate for sub-minimum wages?

D.6. How long does the certificate last?

Chapter V
Child Labor Provisions for 18-Year-Olds 37

Resources 39

Chapter I

Introduction to Child Labor Law

A. Overview

This guide, a joint publication of the Division of Special Education and the Bureau of Adult and Secondary Vocational Education, presents an overview of Federal and Maine child labor law which apply to the employment of youth between the ages of 14 and 18. The purpose is to provide teachers, guidance counselors, job developers and coordinators and other interested school personnel with basic information on the standards and provisions of these laws. It is intended to be an informational guide about the major provisions of these laws. It is not meant to include all the opinions, interpretations or administrative rulings of the Federal and State offices which administer these laws.

The need for this guide evolved because of the variety of education personnel including special education teachers now involved in arranging school-work experiences for students . As more teachers assess and plan for the transitional needs of their students, school-work experiences will be a necessary component of students' independent living preparation. It is important for school personnel to be well grounded in the fundamentals of the child labor requirements. They must be able to properly facilitate these experiences without placing themselves or their respective school systems in jeopardy by illegal student work placements. When employers request information or clarification on the laws, teachers should know when it is their role to answer these questions and when it is more appropriate to refer the employer to the correct Federal or State agency.

School personnel interested in learning more about child labor law and other laws applicable to the employment of youth are encouraged to obtain the publications in the suggested readings list (see below). If you have questions concerning the application of the standards to school-work programs, you are encouraged to contact the agencies which administer the laws. Names, addresses and telephone numbers of contact persons are listed at the back of the book.

Suggested Readings

Child Labor Law Topic	Reference
Fair Labor Standards Act	**Handy Referenced Guide to the Fair Labor Standards Act** (U.S. DOL WH Publication 1282) Revised June 1983.
Child Labor	**Child Labor Requirements in Non-agricultural Occupations** (U.S. DOL WH Publication 1330) Revised September 1985.
	Child Labor Requirements in Agriculture Under the Fair Labor Standards Act (U.S. DOL WH Publication 1295) Revised April 1981.
	Maine Labor Laws Specifically Applicable to Youth (BL 477) March 1987.
Hazardous Occupations	See WH Publication 1330.
Minimum and Sub-minimum Wages	See WH Publication 1282.
	Guide to Maine Minimum Wage Law (BLS No. 62 Rev. 14).

	Regulations, Part 524: Special Minimum Wages for Handicapped Workers in Competitive Employment (U.S. DOL WH Publication 1316) Revised October 1986.
Labor Law	**A Worker's Guide to Labor Law,** fifth edition, edited by Ralph R. Newbert. Bureau of Labor Education, University of Maine, 1987.
Civil Rights	**Maine Human Rights Commission: What is it! How it works!** Revised March 1984.
Accessibility Standards	**Uniform Federal Accessibility Standards,** U.S. Government Printing Office: 1985-494-187.
Section 504	**Handicapped Persons' Rights Under Federal Law,** U.S. Department of Education, Office for Civil Rights. January 1987.
Employment Relationship	**Employment Relationship Under the Fair Labor Standards Act** (U.S. DOL WH Publication 1297) Revised May 1980 Reprinted August 1985.

B. Overview of Laws Applicable to the Employment of Youth

The laws covered in this guide are the child labor, minimum wage and hazardous occupations provisions of the U. S. Fair Labor Standards Act (FLSA) and Maine child labor law. These provisions establish standards for the employment of minors in certain non-agricultural and agricultural occupations. In addition to the FLSA and Maine child labor law, this section of the guide will present a brief overview of other relevant laws applicable to the employment of students.

1. Child Labor Law

Both the State of Maine and the Federal government have laws relating to child labor issues. These laws apply to minors from under the age of 14 through the age of 17. They limit the occupations and places where minors may work, the hours they may work, the wages they receive and establish the need for work or sub-minimum wage permits.

2. Hazardous Occupations Orders

The Federal government has identified places where they feel those under 18 years of age should not work because of the danger inherent in those places and occupations. These orders constitute law and thereby prohibit the employment of youth in these workplaces. The State of Maine in its legislation gives the Bureau of Labor Standards the right to limit employment of minors in certain places of work.

3. Minimum Wage Acts

Both the Federal government and the State of Maine have enacted minimum wage requirements. These establish the minimum wage that persons defined as employees may receive on a per hour basis. At times the State and the Federal acts will not require the same minimum wage. When this happens, the higher of the two acts prevails.

Federal and State law allow students employed in retail or service organizations, under certain circumstances, to be paid less than the minimum wage. Workers who are mentally or physically handicapped and whose earning abilities are reduced may also be employed at rates below the minimum wage. Federal law requires employers to obtain a special certificate from the Wage and Hour Division of the U.S. Department of Labor in order to use these sub-minimum wage provisions.

4. Workers Compensation Act

This act imposes the liability for job related injury on the employer. Employers pay into an insurance fund. The rate varies with the occupation, the number of employees and the employers claim record. This act also imposes on certain agricultural businesses the same liability.

The reader may have other questions regarding liability for injuries or damages in a number of different circumstances. For example, who is liable if a student is injured enroute to work from school? Who pays if the student should damage the work premises? The answers to these questions and others the reader may have should be addressed by the local school because the answers depend on what is covered under the school's insurance policy.

5. Unemployment Insurance

This legislation requires that those who employ workers beyond certain times and dollar amounts, pay into an insurance fund that would provide a partial wage in the event of non-employment. In order to collect, the worker must meet certain conditions. One of these conditions is "available for work". Since full-time high school students do not meet this requirement, unemployment benefits are usually denied to student workers. Employers, however, are still required to pay into the unemployment insurance fund for student workers they employ. Only employers of formally approved vocational cooperative education programs are exempt from this payment.

6. Civil Rights Act

Most Maine workers are covered by the Maine Human Rights Act of 1971 and by a series of federal laws and executive orders. The federal laws include: The Equal Pay Act of 1963, Title VII of the Civil Rights Act of 1964, Executive Order 11246 of 1965, The Age Discrimination Act of 1967, and the Rehabilitation Act of 1973.

The Maine Human Rights Act applies to all employers and unions in Maine, except federal employers and non-profit and fraternal organizations. The federal laws apply to federal employers and to employers of 15 or more persons. The Maine law is similar to the federal laws, but extends protection against age discrimination to workers of all ages and provides greater protection to the mentally or physically handicapped.

If a person suspects employment discrimination, they should contact the agency responsible for enforcing the laws:

Maine Human Rights Commission
State House, Station 51
Augusta, Maine 04333
Phone: (207) 289-2326

Filing a complaint with the agency has the effect of starting an investigation of an employment practice. It does not mean that the person filing the complaint has proven discrimination.

7. Accessibility Standards

The Uniform Federal Accessibility Standards and a comparable Maine law requires that all buildings constructed with federal money be accessible to the handicapped.

8. Section 504 of the Rehabilitation Act

It is illegal to exclude physically or mentally handicapped workers from employment opportunities unless the handicap prevents the worker from being able to perform the job, or if the handicap would endanger the worker or other people in the work area.

Section 504 of the Rehabilitation Act of 1973 and a comparable Maine law requires recipients of federal funding to provide employment and programmatic accessibility to qualified handicapped persons. Regulations promulgated pursuant to the Maine

Human Rights Act require employers to "reasonably accommodate" the limitations of otherwise qualified handicapped employees. Executive Order 9FY 81/82, "Office of the State Handicapped Accessibility Coordinator" spells out the 504 compliance effort for Maine State Government. For more information regarding Section 504, contact the State 504 Coordinator listed in the back.

9. Miscellaneous Rules and Regulations

9.1. Fringe Benefits: No employee regardless of age is entitled to vacation, holiday, severance pay or sick pay benefits. However, if an employer provides these benefits then the benefits must be available to all employees including minors.

9.2. Taxes: Income and social security taxes will be deducted from the worker's wages regardless of their age, amount of wage or whether an employment relationship exists.

9.3. Uniforms and Safety Equipment: Whether the school or the employer is responsible for providing uniforms or safety equipment depends on whether there is an employment relationship (see Chapter II). If the student is a "trainee" and the school has placed the student in the job, then the school is responsible for providing uniforms and safety equipment. If the student is an "employee", then the employer provides the uniforms and safety equipment.

9.4. Rules of the Business Facility: Where trainees are involved, the local education agency is responsible for the students just as though the training was being done at the school building. If the student is an employee rather than a trainee, then the student is subject to the rules of the business. All workers regardless of age are basically subject to the rules of the business with rare exceptions.

9.5. Financial Benefits: Student SSI benefits may be affected by their earnings if the amount of the earnings is great enough. Students who receive SSI and earn a wage must report their earnings to the Social Security Administration.

Student earnings usually do not affect their family's AFDC or Food Stamp benefits. The Maine Department of Human Services (DHS) does not include the earnings of children under the age of sixteen in determining eligibility for these programs. DHS disregards entirely earnings for the first six months (starting January 1st) if the full-time student is between ages sixteen and eighteen. After the first six months DHS applies the 185% test. Typically, student earnings are not high enough to exceed this test. Parents are required to report to DHS when the student goes to work. Parents must also report the child's earnings monthly regardless of whether the earnings affect the parent's monthly benefits.

High school drop outs between the ages of sixteen and twenty-one are eligible to apply for Medicaid. If they are living alone, they may also apply for Food Stamps.

Telephone numbers of local Department of Human Service offices and the Social Security Administration are listed in the back.

C. Educator's Role and Responsibility

Since Federal *and* State government regulate the employment of youth, each has established standards and conditions under which youth under the age of 18 are permitted to work. In many instances the standards are the same under both laws, but in many others they are not. A good illustration of the difference in standards is the minimum wage rates. Under Federal law Maine employers are required to pay their minimum wage

workers at a lower hourly rate, while Maine law requires minimum wage workers to be paid at a higher rate. Is it the educator's responsibility to know which minimum wage rate employers are required to pay in Maine? The answer to this question is no. It is always the *employer's* responsibility to comply with the law. It is the educator's responsibility to know that there are restrictions and conditions of employment governing minors and, when queried by an employer, it is the educator's role to refer the employer to the Maine Bureau of Labor Standards to clarify questions such as raised in the illustration.

Chapter II

Employment Relationship and School-Work Programs

This chapter addresses the relationship of jurisdiction and school-work programs. The employment relationship is the key to determining whether school-work programs come under Federal and/or State jurisdiction.

A. Employment Relationship

Under the Fair Labor Standards Act, in order for there to be an employment relationship, there must be an employer and an employee. The FLSA defines the terms "employer," "employee" and "employ". These statutory definitions and a discussion of them can be found in U.S. Department of Labor Publication WH 1297. If there is an employer-employee relationship, then jurisdiction in the workplace falls under the State and/or Federal Bureaus of Labor. Jurisdiction means that the standards, conditions of employment and other requirements covered by these laws, must be applied to students between the ages of 14 and 17 employed in the workplace.

B. School-Work Programs Not Involving the Employer-Employee Relationship

Under Federal and State law there are three work situations which do not involve an employment relationship: trainee,

volunteer and job shadowing. Jurisdiction over school-work programs which fall within the definitions of these work situations *may* rest with the educational institution. The limits on these activities, however, continue to be defined by both the Federal and State labor departments.

Trainee

Whether students are trainees or employees of an employer will depend upon *all* of the circumstances surrounding their activities in the workplace. These circumstances are defined by a six-point criteria. When *all* of the following criteria are met, the trainee or student is not an employee within the meaning of the Act:

Criteria for Trainees
Not To Be Considered Employees:

1. Training, even though it includes actual operation of the facilities of the employer, is similar to that which would be given in a vocational school.

2. Training is for the benefit of the trainees or students.

3. The trainees or students do not displace regular employees but work under their close supervision.

4. The employer who provides the training derives no immediate advantages from the activities of the trainees or students, and on occasion, his operation may actually be impeded.

5. The trainees or students are not necessarily entitled to a job at the conclusion of the training period.

6. The employer and the trainees or students understand that the trainees or students are not entitled to wages for the time spent in training.

There are restrictions on the amount of training time. The Maine Bureau of Labor Standards limits the training period to no longer than 8 hours per day, no more than 40 hours accumulative nor span a period of time greater then 2 weeks. Trainees could spend up to a maximum of 4 hours in training and 4 hours in school per day for 10 days or a maximum of 8 hours per day for 5 days without school time. It should be stressed that a six-point criteria training program ends when the trainee becomes a benefit to the employer.

The Maine Bureau of Labor Standards will extend the time period up to 90 days beyond the 40 hours for student trainees with mild, moderate or severe mental retardation or multiple handicaps. The school must submit a form, available from the Bureau, requesting the extension. The extension does not apply to other handicapping conditions such as learning disability, emotionally disturbed or individuals with only physical handicaps. The maximum time period is 90 days regardless of whether the skills are mastered. If there is the situation where the student trainee has not mastered the job skills within the 90 day period, the Maine Bureau of Labor suggests that the trainee's placement be changed to focus on new job skills.

There are several school-work programs in which students are trainees:

a. **Community Based Learning:** Community based learning is a formal individualized academic program that utilizes the community and its resources in conducting planned learning experiences. The learning experience is designed between the teacher and the student and reduced to a set of objectives that the student must complete.While a job shadow component, subject to limits, may be included, this is not a program of work or employment. No employee-employer relationship is required. The school has jurisdiction.

b. **Field Based Learning/Clinical Experience:** Field based learning which is also called clinical experience is

structured programming that occurs outsided the learning institution and under the direct and immedicate supervision of a program instructor. Learners may engage in productive work, but the planned learning activities are primary, not the production or service. In this work experience program students are not paid.

As long as the program instructors are present at the training site for the duration of the learning experience and productivity is not the primary function, the State and Federal Departments of Labor consider this to be a training activity and jurisdiction remains with the schools.

c. **Job Sampling:** Job sampling is a term that evolved from educational programming concepts originating with Industrial Arts. It is currently utilized by those attempting to assess appropriate work placement for special needs populations. In a business setting, a student engaged in job sampling would be considered a trainee so the six-point criteria must be met.

Volunteer

The FLSA defines "employ" the same as the Maine Statute meaning "to suffer or permit to work". Individuals who volunteer or donate their services, usually on a part-time basis, for public service, religious, or humanitarian objectives, not as employees and without contemplation of pay, are not considered as employees of the religious, charitable and similar non-profit organizations which receive their services. This definition of "volunteer" is used by the Maine Bureau of Labor Standards because the Maine law does not define volunteer.

Examples of volunteers would be an office employee of a hospital who volunteers to sit with an elderly patient during off-duty hours as an act of charity. In this instance, there is no employer-employee relationship involved. An office employee,

however, could not volunteer to do office work for the hospital, as this would be considered compensable time.

Job Shadowing

Job shadowing is when a student is placed into a work environment in conjunction with their studies. The student is allowed to observe daily functions of the business and occasionally performs a simple task. There is no pay involved and the student is not performing a service for the business. An example would be a student who is interested in working with animals who is placed at a veterinary hospital for a day or two. The student might be allowed to feed a couple of the pets or to assist the vet once or twice. Another example would be for someone who is interested in office work to go into and observe office functions. The student might be allowed to type a form letter or answer the telephone a couple of times just to see what office work is really like. Maine limits the time spent in a job shadow situation to no more than 40-hours with a 2-week span.

It is very important to note that even though a business, school official or prospective employer may consider a program to be voluntary, training, or job shadowing, it may not be recognized as such by either State or Federal agencies. When in doubt, you or the employer should contact the Maine Bureau of Labor Standards for clarification.

Any programs where students are placed into businesses at less than minimum wage or with no wages *must* be registered with the Maine Bureau of Labor Standards. Even though the Bureau of Labor Standards approves and establishes guidelines for job training situations, either with or without pay, they may not be recognized by the U.S. Department of Labor. Therefore, compliance with U.S. Department of Labor Standards should be verified with their office before student placement occurs.

B. School-Work Programs Involving an Employer-Employee Relationship

School-work programs are called by a variety of names. Sometimes the name genuinely represents the educational program, at other times it is utilized for appeal or used erroneously in secondary school programming. Some of the more common titles utilized have been: work study; work experience; work adjustment training; community based learning; cooperative education; internship; clinical experience; apprenticeship; job sampling; job assessment; alternative education; or variations of these. Regardless of the name utilized, when a student enters the workplace, the rules of the workplace prevail.

The following are definitions of the programs with a brief comment regarding labor law applicability and jurisdiction:

1. Alternative Education

An alternative education program while generally a secondary school option allows students at all levels to be involved in planning their education in a non-traditional manner. For students 14 to 17 years of age the alternative plan often involves a work training and/or work experience component. The work training and/or work experience activity would fall under the jurisdiction of Federal and State laws.

2. Apprenticeship

Apprenticeship is a formal agreement between the Maine or U.S. Department of Labor and an employer who sponsors an apprentice. This formal agreement includes a progressive schedule of tasks to be learned, a progressive wage scale, and supporting related instruction to be completed by the apprentice. The agreement is supervised by a State Apprenticeship Committee or by the Federal Department of Labor. A high school diploma or its equivalent is required for entry. Apprenticeship would, therefore, be inappropriate for secondary school students. However, a

variation is pre-apprenticeship. The Maine State Apprenticeship and Training Council have established guidelines for the recognition of pre-apprenticeship programs. The key issue here is that there is committment by the employer to specific apprentices for advanced standing in a registered apprenticeship program.

Apprenticeship operates under the jurisdiction of the State and Federal Departments of Labor and is subject to all labor law as well as to strict rules governing this particular program.

3. Internship

Internship, a program not utilized at the secondary education level, is an integral component of a student's planned educational program which occurs at or near the end of a post-secondary educational program. An internship provides the post-secondary student with an opportunity for applied practice in a real work setting. All State and Federal labor laws apply to the internship program.

4. On-the-job-training

On-the-job-training or OJT is a program concept that is extensively utilized by the Veterans Adminstration, as well as a major part of Federal job training programs; such as Vocational Rehabilitation (VR) and Job Training Partnership Act (JTPA). Under formal OJT programs part of the initial wage is often subsidized to help the employer defray the cost of initial training for selected disadvantaged or handicapped populations. Like the Apprenticeship program, the training agreement between the worker and the employer covers the scope of training but unlike Apprenticeship the agreement does not include the instruction requirement.

There are no formal OJT programs operating within secondary schools, however, there are limited linkages with VR and JTPA that apply to students. Jurisdiction rests with the State and Federal Bureaus of Labor and all labor laws apply.

5. Vocational Cooperative Education

Vocational Cooperative Education is a program which operates under the auspices of the Bureau of Adult and Secondary Vocational Education. Certified cooperative education coordinators plan progressive job-based learning with in-school related instruction as integral components of the program. All State and Federal labor laws apply, but there are waivers in certain situations.

6. Work Experience Programs

Work experience is a term often utilized in a generic manner to identify a variety of work experience activities involving students. Usually the goals of these programs involve development of work habits, not necessarily specific work skills. Federal and State labor laws apply.

7. Work Release

Work release in education simply provides an early school release for students that work. The student's activities on the job are not monitored and students may or may not receive credit for the work experience.

The State and Federal Departments of Labor have full jurisdiction and all State and Federal labor laws apply.

8. Work Study

Work study did not receive recognition until it evolved as a federally funded program to assist economically disadvantaged post-secondary students by providing on-campus work opportunities. During the 1960's work study programs were available at the secondary level for handicapped students who spent one-half day in school and one-half day in a work environment. Currently, however, there are no official work study programs operating at the secondary level. The post-secondary work study programs are subject to all State and Federal labor laws.

Chapter III

Child Labor Provisions for 14- and 15-Year-Olds

This chapter contains questions and answers which illustrate the Federal and State legal requirements covering the employment of 14 - 15-year-olds. The conditions under which 14 and 15-year-olds can be employed are very limited. Before placing a student in a work situation the educator should contact the Maine Bureau of Labor Standards for clarification of these conditions. Federal law states that a person under the age of 16 may not work during school hours.

A. Age

A.1. Is the student younger than 16?

Fourteen is the mininum age for employment in specified occupations outside of school hours for limited periods of time each day and each week. Employers are subject to penalty for violations of child labor law. Employers may protect themselves from unintentional violation of the labor provisions by keeping on file an age certificate for each minor employed to show that the minor is the minimum age for the job. In Maine a work permit is required for anyone under the age of 16. A person eligible for a work permit can obtain one by bringing a birth certificate or other legal proof of age, to the superintendent of schools in their city or town. A person should not apply for a work permit until they

have a job offer and know what the duties of the job will be. Once a youth receives an approved work permit, they should bring it to their employer. The employer *must* keep the work permit on file for the duration of the youth's employment.

If the student is under the age of 14 there are limited opportunities for paid employment.

- Children under 14 years of age can be employed *by, with* or *under* the supervision of a parent in any business where the minimum age is normally 14.
- Children employed as actors or performers in motion pictures, theatrical, radio or television productions.
- Children engaged in the delivery of newspapers to the consumer.
- Homeworkers engaged in the making of wreaths composed principally of natural holly, pine, cedar, or other evergreens (including the harvesting of the evergreens).

B. Occupations

B.1. What are the types of work which can be performed by 14 - 15-year-olds?

Federal law identifies nine permitted occupations are in retail, food service and gasoline service establishments. Some occupations listed below may be similar to occupations listed in the Hazardous Occupations Orders which anyone under the age of 18 is not permitted to work. Educators should obtain clarification from the Maine Bureau of Labor Standards before placing a 14- or 15-year-old in a work situation.

1. Office and clerical work (including office machines).
2. Cashiering, selling, modeling, art work, work in advertising department, window trimming, and comparative shopping.
3. Price marking and tagging by hand or by machine, assembling orders, packing, and shelving.
4. Bagging and carrying out customer's orders.
5. Errand and delivery work by foot, bicycle, and public transportation.
6. Cleaning work — vacuum cleaners and floor waxes and ground maintenance, except the use of power driven mowers or cutters.
7. Kitchen work and other work involved in preparing and serving food and beverages, including the operation of machines and devices used in the performance of such work, such as, but not limited to, dishwashers, toasters, dumbwaiters, popcorn poppers, milk shake blenders, and coffee grinders.
8. Work in connection with cars and trucks if confined to the following:

   a). Dispensing gasoline and oil.

   b). Courtesy service.

   c). Car cleaning, washing and polishing.

   Not included: use of pits, racks or lifting apparatus or inflation of any tire mounted on a rim equipped with a removable retaining rim.

9. Cleaning vegetables and fruits, and wrapping, sealing, labeling, weighing, pricing and stocking goods when performed in areas physically separate from areas where meat is prepared for sale outside of freezers or meat coolers.

Maine law identifies 13 permitted occupations:

1. Agriculture,
2. Domestic work including babysitting, housework, gardening and snow removal,
3. Hospitals,
4. Nursing homes,
5. Municipal employment,
6. Children's camps,
7. Eating places,
8. Ice cream stands,
9. Stores,
10. Gasoline service stations,
11. Sporting and overnight cabins,
12. Outside occupations on grounds of hotels and motels,
13. Non-hazardous work on grounds of manufacturing or mechanical establishments.

B.2. Are there restrictions on the type of work performed by 14 - 15-year-olds?

Federal law identifies a number of occupations prohibited to 14- and 15-year-olds because they may interfere with schooling, health or the well-being of students:

1. Any manufacturing occupation.
2. Any mining occupation.
3. Processing
   a). filleting of fish,
   b). dressing chicken,
   c). cracking nuts,
   d). laundering as performed by commercial laundries and dry cleaning.
4. Occupations requiring the performance of any duties in work rooms or work places where goods are manufactured, mined or otherwise processed.
5. Public messenger service.
6. Operation or tending hoisting apparatus or of any power driven machinery other then those specified in the foregoing lists as machines which such minors may operate in such establishments.
7. Any occupations found and declared to be hazardous.
8. Occupations with:
   a). transportation of persons or property by rail, highway, air or water pipeline or other means,
   b). warehousing and storage,
   c). communications and public utilities,
   d). construction (including repair).

   Except office or sales work in connection with these occupations (not performed on transportation media or at the actual construction site).

9. Any of the following occupations in a retail food service or gasoline service establishment:

   a). work performed in or about boiler or engine rooms.

   b). work in connection with maintenance or repair of the establishment, machines or equipment.

   c). outside window washing (that involves working from window sills and all work requiring the use of ladders, scaffolds or their substitutes).

   d). cooking (except at soda fountains, lunch counters, snack bars or cafeteria serving counters) and baking.

   e). occupations which involve operating, setting up, adjusting, cleaning, oiling or repairing power driven food slicers and grinders, food choppers and cutters and bakery-type mixers.

   f). work in freezers and meat coolers and all work in preparation of meats for sale, *except* wrapping, sealing, labeling, weighing, pricing, and stocking when performed in other areas.

   g). loading and unloading goods to and from trucks, railroad cars or conveyors, all occupations in warehouses, except office and clerical work.

Maine law identifies nine establishments prohibited to minors under age 16:

1. Bowling alley,
2. Pool room,
3. Theatre,
4. Dance hall,
5. Hotel or motel (except groundskeeping),
6. Inside work at manufacturing or mechanical establishment including garages,
7. Commercial place of amusement,
8. Laundries,
9. Dry cleaners.

B.3. What are hazardous occupations?

There are certain occupations which have been declared hazardous by the Secretary of Labor under federal law and the Director of the Bureau of Labor under Maine law. This means that the occupation has been found to be dangerous or unhealthy for persons under the age of 18 to perform it. There are presently 17 occupations on the federal hazardous list and 15 on the Maine Hazardous list.

For a complete list of these occupations refer to WH Publication 1330 for the federal hazardous occupations.

B.4. Are agricultural hazardous occupations prohibited to 14 - 15-year-olds?

The Secretary of Labor has developed a separate set of hazardous occupations for farm work. For a list of the Federal hazardous occupations refer to WH Publication 1295.

Maine law is less restrictive than the federal law. In Maine the only restriction is that youths *under* the age of 14 cannot work in direct contact with hazardous machinery or hazardous substances, except for the planting, cultivating or harvesting of field crops.

The employer should contact the Maine Bureau of Labor Standards for a judgment on which of the two standards applies to the job placement.

B.5. Are there any exemptions to the agricultural hazardous occupations?

There are a couple of exemptions to the hazardous occupations for certain 14 - 15-year-olds under federal law.

First, the restrictions do not apply to any youth who works for their parents, or guardian, or a farm owned or operated by one of them. Second, under carefully regulated conditions, a student-learner may work in some of the federal hazardous occupations. Further, a 14-15 year old who has *completed* training under a 4-H Federal Extension Service Training Program or Vocational Agricultural Training Program may be exempt from certain provisions. For more information the Federal Wage and Hour Division should be contacted.

C. Hours

C.1. Are the number of hours and times of day limited?

Federal and state law limit the number of hours and times of day that 14 - 15-year-olds are allowed to work. When there are differences between the two sets of standards, the higher standard applies. If you or the employer are unclear about which is higher, you should contact the Maine Bureau of Labor Standards.

Federal requirements state that a person under 16 may *not* work:

a) during school hours;

b) before 7 a.m. or after 7 p.m. (9 p.m. from June 1 through Labor Day);

c) more than 18 hours a week during school weeks;

d) more than 3 hours a day on a school day;

e) more than 40 hours a week during non-school weeks; or

f) more than 8 hours a day during non-school days.

Maine requirements state that a person under 16 may *not* work:

a) during school hours if under 15;

b) before 7 a.m. or after 9 p.m. (10 p.m. if 15);

c) more than 28 hours a week during school weeks;

d) more than 4 hours a day on a school day;

e) more than 48 hours a week during a school vacation;

f) more than 8 hours a day during a school vacation; or

g) more than 6 consecutive days.

Note: Under Maine law, there are no restrictions on the hours of employment for school drop outs who are age 15 except that they may not work after 10:00 p.m..

D. Wages

D.1. Are 14 - 15-year-olds paid minimum wage?

The minimum wage law applies to all workers. However there are provisions by which certain groups of workers may be paid less than minimum wage.

D.2. What are the exceptions to the minimum wage rate?

Federal and Maine law allow certain groups of people to be paid below the legal minimum wage. These groups of people are students under 19 years of age and handicapped workers in competitive or sheltered employment.

Certain employers or jobs are also exempt from the legal minimum wage rate under federal and Maine law. If a person has a question about whether or not a particular job is covered by the minimum wage law, they should check with the Wage and Hour Division of the U.S. Department of Labor or with the Wage and Hour Division of the Maine Bureau of Labor.

D.3. What are the sub-minimum wage rates for full-time students in certain jobs?

Under federal law the sub-minimum wage rate is 85 percent of the minimum wage with a full-time student certificate and only in retail or service businesses. Under Maine law the sub-minimum wage rate is 75 percent of the minimum wage. There are differences between the federal and Maine law in this area, and the employer should check with the Wage and Hour Division of the Maine Bureau of Labor, if there are any questions.

In order to pay the full-time student below the minimum wage, the employer must receive authority to do so from the Wage and Hour Division of the U.S. Department of Labor. Maine law does not require an employer to file an application for authority to pay full-time students below the minimum wage. The employer may pay this special minimum wage as long as the full-time student is 18 or less.

D.4. What are the sub-minimum wages for handicapped workers in competitive or sheltered employment?

Any employee with a physical or mental handicapping condition, if the disability is a severe handicap for the performance of the job, may apply to the Director of the Maine Bureau of Labor Standards for authorization to accept employment at a rate lower than the legal minimum wage rate. Application forms may be obtained upon request without charge from the Director.

Students who perform academically in school at grade levels below what is expected (may be referred as disadvantaged by some school personnel) are not eligible to earn sub-minimum wages under this exemption.

Federal law permits sub-minimum wages to be paid to handicapped workers in competitive employment or sheltered employment and to handicapped trainees who are VR clients and in a sheltered workshop or in a work activity center. Before the October 16, 1986, rule change, Federal law allowed employers to pay a commensurate rate of 50 percent or less of the legal minimum wage. Since October 16, 1986, employers can now base the commensurate wage on the *level* of handicapping condition and *level* of productivity. In order to pay commensurate rates employers are required under Federal law to apply for a handicapped worker certificate and to submit a Written Assurances form. Employers should contact the Wage and Hour Division of the U.S. Department of Labor to obtain the forms.

D.5. Are there any reporting or recordkeeping requirements for schools?

Federal and Maine law do not require schools to maintain records or meet reporting requirements concerning the documentation of the worker's handicapping condition and level of productivity. The employer is responsible for complying with the Federal and Maine recordkeeping and reporting requirements. The employer is also responsible for applying for the handicapped worker certificate and submitting written assurances.

D.6. Can the school apply for the certificate for sub-minimum wages?

The school coordinator can make the application or arrange for the certificate until the student graduates from high school. However, the employer is liable for the certificate. This means that the *employer* will be penalized for failing to obtain the authority to pay sub-minimum wages and not the school.

D.7. How long does the sub-minimum wage certificate last?

For handicapped student workers the certificate lasts for the school year and is renewed annually until the student graduates.

Chapter IV

Child Labor Provisions for 16 - 17-Year-Olds

This chapter contains questions and answers which illustrate the legal requirements covering the employment of 16 - 17-year-olds. As in the previous chapter, both Federal and Maine labor law are included in the answers. When the legal standard differs between the Federal and Maine requirement, the higher standard will be referenced when known.

A. Age

A.1. Is the student 16 or 17?

If the student is 16 or 17, a certificate of age which proves the age of the person who has obtained it is suggested. A 16- or 17-year-old can obtain a certificate by bringing their birth certificate to the superintendent of schools in their city or town. Although the certificate of age is created under Federal law, the State of Maine issues and regulates the use of the certificate. Neither Federal nor State law requires employers to obtain a certificate before employing a youth. It just provides a good way for an employer to be sure of a person's age. An employer should keep an employee's certificate of age on file.

B. Occupations

B.1. Are there any restrictions on the type of work performed by 16-17-year-olds?

Federal and Maine law prohibit 16 - 17-year-olds from working in hazardous occupations. There are certain occupations which have been declared hazardous by the Secretary of Labor under Federal law and the Director of the Bureau of Labor under Maine law. This means that the occupation has been found to be dangerous or unhealthy for persons under the age of 18. There are presently 17 occupations on the federal hazardous list and 15 on the Maine hazardous list. However, under Maine law the Director may determine an occupation to be hazardous, dangerous to life or limbs, injurious to morals or where health will be injured.

For a complete list of these occupations refer to WH Publication 1330 for the federal restrictions.

B.2. Are there exceptions to the hazardous occupation restrictions?

Federal law permits certain 16 - 17-year-olds to be employed in a number of the occupations classified as hazardous if they are apprentices or student-learners enrolled in cooperative education programs. There are strict regulations which define the conditions under which this age group may be employed. Information on these special situations can be obtained from the Federal Wage and Hour Division.

Maine law also exempts certain 16 - 17-year-olds if they are participating in an approved Apprenticeship Training Program. However, apprenticeship programs require participants to be high school graduates which would exclude this age group anyway (see Apprenticeship program in Chapter II).

Maine law also exempts 16 - 17-year-olds who participate in industrial education programs including cooperative education programs in which otherwise prohibited machinery is used . The Maine Bureau of Labor has information about these regulations.

B.3. Does the hazardous occupations exemption apply in summer job placements if the job developer or coop coordinator continues to monitor the placement?

The exemption applies for summer placements in the cooperative education programs only. Programs are written for a 12 month period. The job developer or cooperative education coordinator must monitor the placement.

B.4. Are there hazardous occupations prohibited to 16 - 17-year-olds employed in agriculture?

No.

C. Hours

C.1. Are the number of hours and times of day limited?

Federal and state law do not limit the number of hours or times of day that 16 - 17-year-olds are allowed to work. However, in Maine a person 16-17 years of age may not work as a security guard between the hours of 6 p.m. and 6 a.m.

D. Wages

D.1. Are 16 - 17-year-olds paid minimum wage?

Both Federal and Maine law require that youth be paid the same minimum wage that an adult worker is required by law to receive. However, Federal and Maine law allow certain groups of workers to be paid below the legal minimum wage. These groups of workers are students under 19 and handicapped workers in competitive and sheltered employment.

Certain employers or jobs are also exempt from the legal minimum wage rate under Federal and Maine law. If a person has a question about whether or not a particular job is covered by the minimum wage law, they should check with the Wage and Hour Division of the U.S. Department of Labor or with the Wage and Hour Division of the Maine Bureau of Labor. (See back for telephone numbers.)

D.2. What are the sub-minimum wage rates for students?

Under Federal law the sub-minimum wage rate is 85 percent of the federal minimum wage in retail and service only. Under Maine law the sub-minimum wage rate is 75 percent of the State minimum wage. There are differences between the Federal and Maine law in this area, and the employer should check with the Wage and Hour Division of the Maine Bureau of Labor, if there are any questions.

In order to pay the student below the minimum wage, the employer must obtain a certificate from the Wage and Hour Division of the U.S. Department of Labor. Maine law does not require an employer to file an application for authority to pay students below the minimum wage. The employer may pay this special minimum wage as long as the student is 18 or less.

D.3. What are the sub-minimum wages for handicapped workers in competitive or sheltered employment?

Any employee who is physically handicapped because of age or otherwise, or who is mentally handicapped, if the disability is an actual handicap for the performance of the job, may apply to the Director of the Maine Bureau of Labor Standards for authorization to accept employment at a rate lower than the legal minimum wage rate. Certificate forms may be obtained upon request without charge from the Director.

Federal law permits sub-minimum wages to be paid to handicapped workers in competitive or sheltered employment and handicapped trainees who are VR clients and in a sheltered workshop or in a work activity center. Federal law allows employers to pay a commensurate rate. Before October 16, 1986, the commensurate rate was 50 percent of the legal minimum. The federal law was revised effective October 16, 1986. The compensurate wage is currently based on the *level* of handicapping condition and *level* of productivity. Employers should contact the Wage and Hour Division of the U.S. Department of Labor for clarification.

In order to pay commensurate rates employers are required under Federal law to apply for a handicapped worker certificate.

D.4. Are there any reporting or recordkeeping requirements for schools?

Federal and Maine law do not require schools to maintain records or meet reporting requirements concerning the documentation of the worker's handicapping condition and level of productivity. The employer is responsible for complying with the Federal and Maine recordkeeping and reporting requirements. The employer is also responsible for applying for handicapped worker certificate and submitting written assurances.

D.5. Can the school apply for the certificate for sub-minimum wages for handicapped student workers and student learners?

The school coordinator can make the application or arrange for the certificate until the student graduates from high school. However, the *employer* is liable for the certificate. This means that the employer will be penalized for failing to obtain the authority to pay sub-minimum wages and not the school.

D.6. How long does the certificate last?

For handicapped student workers the certificate lasts for the school year and is renewed annually until the student graduates.

Chapter V

Child Labor Provisions for 18-Year-Olds

Upon reaching the age of 18, a person may work at any time and in any job. The hazardous occupations restrictions and sub-minimum wage provisions of the federal and state child labor law no longer apply. However, special minimum wages for students and handicapped workers in competitive or sheltered employment may still apply. Employers should be referred to U.S. Department of Labor publications WH 1316 and the 1986 amendment to Section 14 (C) of the Fair Labor Standards Act.

Resources

Maine Bureau of Labor

Anne Hamel
Supervisor of Employment Standards
Bureau of Labor
State House Station 45
Augusta, ME 04333
Tel. 289-3331

Maine Dept. of Educational and Cultural Services

Richard Bartlett
Division of Special Education
State House Station 23
Augusta, ME 04333
Tel. 289-5950

Maurice Parent
Bureau of Adult and Secondary Vocational Education
State House Station 25
Augusta, ME 04333
Tel. 289-5854

Federal Wage and Hour Division

Alfred Butler
Area Director
Wage and Hour Division
66 Pearl Street
Portland, ME 04102
Tel. 780-3344 Ext. 344

Margaret MacDonald
Employment Standards Admin.
U.S. Dept. of Labor
JFK Building
Boston, MA 02203
Tel. (617) 565-2095

Maine Human Rights Commission
State House Station 51
Augusta, ME 04333
Tel. 289-2326

Office of State Handicapped Accessibility Coordinator

Brian A. Trask
32 Winthrop Street
Augusta, ME 04330
Tel. 289-2141
TTY 289-3094
TTY 1-800-332-1003

Social Security Administration
151 Forest Avenue
Portland, ME 04103
Tel. 780-3536
Toll Free 1-800-322-9401

Maine Department of Human Services Regional Offices

Region I

509 Forest Avenue
Portland, ME
Tel. 774-4581
Toll Free 1-800-482-7520

180 Main Street
Biddeford, ME
Tel. 282-6191
Toll Free 1-800-322-1919

Lower Mid Town Mall
Sanford, ME
Tel. 324-9472
Toll Free 1-800-482-0790

Region II

200 Main Street
Lewiston, ME
Tel. 795-4300
Toll Free 1-800-482-7517

99 North Main Street
Farmington, ME
Tel. 778-6054
Toll Free 1-800-442-6382

117 Main Street
Mexico, ME
Tel. 364-7884
Toll Free 1-800-482-0702

Market Square
South Paris, ME
Tel. 743-7716

Region III

Capitol Shopping Center
Augusta, ME
Tel. 289-2851
Toll Free 1-800-452-1926

140 North Avenue
Skowhegan, ME
Tel. 474-5551
Toll Free 1-800-452-4602

360 Old County Road
Rockland, ME
Tel. 594-2521
Toll Free 1-800-432-1680

Region IV

Griffin Road
Bangor, ME
Tel. 947-0511
Toll Free 1-800-432-7825

Short Street
Ellsworth, ME
Tel. 667-5361
Toll Free 1-800-432-7823

204 A North Street
Calais, ME
Tel. 454-2131
Toll Free 1-800-622-1400

125 Summer Street
Dover-Foxcroft, ME
Tel. 564-3444
Toll Free 1-800-431-1641

100 Court Street
Machias, ME
Tel. 255-8641
Toll Free 1-800-432-7846

Region V

5 Mechanic Street
Houlton, ME
Tel. 532-9531
Toll Free 1-800-432-7338

38 Pleasant Street
Fort Kent, ME
Tel. 834-3934
Toll Free 1-800-432-7340

41 Washburn Street
Caribou, ME
Tel. 498-8151
Toll Free 1-800-432-7366

634 Main Street
Presque Isle, ME
Tel. 498-8151

42